IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8261 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARANBHAI GOVINDBHAI PATEL

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 8261 of 1999

MR DN PANDYA for Petitioner No. 1

Ms. Archana Raval, AGP for Respondent No. 1,3-5

MR SUNIL K SHAH for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 30/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Pandya for the petitioner; Ms. Raval, learned AGP for the respondent authorities, Mr. Sunil K. Shah, learned advocate for respondent no.1. Notice of rule issued by this court has

been served upon the respondent no.2 but the respondent no.2 has not remained present before this court either in person or through any advocate.

The petitioner was appointed as a social worker following a public advertisement dated 15.5.1965. Thereafter, the petitioner remained on the post of BEE and DEE upto 21st October, 1992 continuously. Thereafter, the petitioner was promoted on the post of TDO and was posted as Instructor and ultimately, lastly, the petitioner worked with the District Panchayat, Ahmedabad on the post of Chitnis from 27th August, 1996 to 31st January, 1998 when he retired from service by reaching the age of superannuation. Earlier, the petitioner had filed special civil application no. 6558 of 1985 with another petitioner RJ Gandhi against the respondents wherein the question was raised to the effect that whether the fixation of a lower grade for persons belonging to the cadre of social workers and other cadres but not holding post graduate degree is violative of Article 14 and 16 of the Constitution of India when a higher grade is fixed for persons belonging to the same cadre or cadres but holding post graduate degree. The said petition was decided by this court (Coram : SK Keshote,J.) by judgment and order dated 3.12.1997. As per the observations made by this court in para 13 of the said judgment, this court has not find any merits in the contention of the counsel for the petitioners that two different pay scales could not have been prescribed only on the ground of qualification. So far as the second grievance of the petitioners in the said petition regarding recovery of the excess amount paid to them was concerned, it has been observed by this court that the period has to be divided into two parts; first part is the period during which the petitioners have drawn the pay in the pay scale of Rs.550-900 till June, 1981 and the second part subsequent to June, 1981. The Government has, on or about 30th June, 1981, taken a positive view that those social workers and the extension educators who did not hold the post graduate degree and who are appointed prior to 1.6.1967 shall be given the revised grade of Rs.425-700 and not the grade of Rs.550-900 and the amount of salary drawn by them on the basis of grade of Rs.550-900 in excess of the amount of salary which they could have drawn on the basis of Rs.425-700 shall be recovered from them. Thus, as per the observations made by this court in the said judgment, that the recovery of the excess amount paid to the petitioners for the period prior to 30th June, 1981 may be of the erroneous act of the respondents but the petitioners also cannot be blameworthy of the same. The petitioners have not

snatched away something from the pocket of the respondents but as the matter remains to be in dilemma whether they are entitled to the pay scale of Rs.550-900 or Rs.425-700, they were given the pay scale of Rs.550-900 for all the time to come till the order of the Government passed on or about 30th June, 1981 came into light. In this regard, it has been observed by this court in the said judgment as under:

"In view of this fact, the recovery of the excess amount for the period earlier to 30th June 1981 stand on altogether different footing and in this case before effecting any such recovery, the respondents have to give an opportunity of hearing to the petitioners and then to consider that if they are not entitled to the pay scale of Rs.550-900 then whether the excess amount paid to them has to be waived or not. However, in case after 30th June 1981 they have been paid the pay in the pay scale of Rs.550-900 then certainly the recovery could have been ordered. SO to the aforesaid extent, this writ petition deserves to be partly allowed and it is hereby ordered to the respondent State of Gujarat to consider the question of waiver of recovery to be made for the excess amount stated to be paid to the petitioners till 30th June, 1981 after giving notice and opportunity of hearing to them. However, in case ultimately the Government decides not to waive this recovery, then a reasoned order may be passed and copy of the same may be sent to the petitioners and liberty is granted to the petitioners for revival of this special civil application in case of difficulty. To the aforesaid extent, this special civil application stands partly allowed and Rule stands disposed of accordingly with no order as to costs. "

Thus, the observations made by this court referred to the above namely ' However, in case after 30th June 1981 they have been paid the pay in the pay scale of Rs.550-900 then certainly the recovery could have been ordered' has given handle to the respondents to recover the amount from the petitioners. In light of the said observations made by this court, the respondents have passed order dated 4.9.1999 annexure-A wherein notice has been issued to the petitioner to pay the total amount of Rs. 1,26,190.20 ps. to the respondents towards the difference of the scale of Rs.550-900, subsequently revised in the pay scale of Rs. 1640-2900

from July, 1981. Second order has been passed by the respondent no.2 to recover Rs.26,572.00 from the retirement benefit of the petitioner and the said amount has already been recovered by respondent no.2 from the retirement benefits of the petitioner and the same has been remitted to the first respondent. These two orders as well as the action of withholding 10 per cent of the amount of provident fund is under challenge in this petition.

Learned advocate Mr. Pandya appearing for the petitioner has submitted that out of these two orders, one order has been passed by the first respondent no.1 which has yet not been implemented and the second order is dated 16.10.1999 which was already implemented and executed by respondent no.2 and the amount in question has been recovered from the retirement benefits of the petitioner and has been remitted to respondent no.1 and thirdly, the respondents have withheld 10 per cent of the amount of provident fund and the 10 per cent of the PF amount has not been paid to the petitioner till this date and the said action as well as the aforesaid two orders are under challenge. According to him, the respondents have passed these orders and have withheld 10 per cent of the amount of provident fund of the petitioner without affording any opportunity whatsoever to the petitioner and, therefore, the orders are required to be quashed on that ground alone. According to him, these orders are passed subsequent to the retirement of the petitioner on 31st January, 1998. He, therefore, raised two contentions before this court. One contention raised by him is to the effect that after retirement, no recovery can be ordered against the petitioner by the respondents. The second contention raised by him is to the effect that the orders as well as the action in question are liable to be quashed and set aside as the petitioner has not been given any opportunity whatsoever before passing the said orders and taking the action of withholding 10 per cent of the amount of provident fund though the orders as well as the action were adversely affecting the prestige and status of the petitioner and, therefore, the orders and the action are contrary to the principles of natural justice.

As against that, it was submitted on behalf of the respondents that the respondent no. 1 has filed affidavit in reply to the petition. It has also been submitted that earlier, this question was examined by this court (Coram : S.K. Keshote,J.) in the above referred judgment and the order in question has been passed in accordance with the judgment of this court and,

therefore, now the petitioner cannot raise such grievance. It has also been submitted that now the petitioner cannot reagitate the same issue which has, once, been decided by this court. It has also been submitted that the respondent no.1 has given details to justify that the petitioner is not entitled for the scale of Rs. 550-900 which was subsequently revised to Rs.16400-2900. It has also been submitted that the details have been given and the scales are based on qualification. Ultimately, according to the respondent No. 1, the petitioner was not holding the qualification of Post Graduate and, therefore, the petitioner was not entitled for the scale of Rs.550-900 which was revised in the pay scale of Rs. 1640-2900 and, therefore, the respondents were right in ordering recovery of the excess amount by refixing the pay scale of the petitioner. According to the respondents, whatever orders passed by the respondents for recovering the amount from the petitioner are legal, valid and just orders and the respondents are entitled to recover the same as the same was wrongly paid to the petitioner. The amount of Rs.26572.00 which was recovered by respondent no.2 from the petitioner's retirement benefit has been remitted to the first respondent by cheque dated 4.12.1999 and now the respondents are required to recover the remaining amount of Rs.99,618.20 from the petitioner. According to the respondents, in view of the observations made by this court in the earlier petition, the petitioner is not entitled for any opportunity before effecting the recovery.

As against that, it was submitted by the learned advocate Mr. Pandya for the petitioner that the petitioner has filed rejoinder to the reply filed by the respondent.

I have considered the submissions made by the learned advocates for the parties. It is required to be noted that the respondent no.2 has, though served, not appeared before this court either in person or through any advocate. In view of that, this court has considered the merits of the matter in absence of respondent no.2.

In view of this back ground, following questions are arising for consideration of this court:

(i) Whether the respondents are entitled to recover any amount from the petitioner without giving any opportunity to the petitioner only in view of the observations made by this court in Special Civil Application No. 6558 of 1985 dated 3rd December,

1997 or not?

(ii) Whether the respondents are entitled to recover any amount from the petitioner after retirement of the petitioner on 31st January, 1998?

(iii) Whether the respondents are entitled to make recovery with retrospective effect for the mistake committed by themselves to grant the scale of Rs.550-900 which was then revised to Rs.1640-2900 when the respondents are not alleging against the petitioner that the petitioner has misrepresented or has played fraud with the respondents for getting the said scale ?

It is not in dispute between the parties that the petitioner's service conditions are governed under the Bombay Civil Service Rules since the petitioner was the employee. Therefore, the fourth question is as to whether the petitioner would be entitled for the benefit of rule of the BCSRs or not which provides that when any rule or order regulating pay is made with retrospective effect, the pay of a Government servant affected by such order or rule, shall be fixed notionally as if the rule order were applicable in his case but the Government servant concerned shall not be called upon to refund the resultant amount of overpayment on account of pay and allowances, in view of the Proviso to Rule 57A which provides that in case where the erroneous promotion or appointment was given on the basis of false information furnished by the concerned Government employee, departmental action shall be taken against him and the resultant amount of over payment on account of pay and allowances shall also be recovered from him.

I have considered the aforesaid four questions on the basis of the factual aspects of the matter which are not in dispute between the parties. According to the respondents, the petitioner was not the post graduate and therefore, the petitioner was not entitled for the scale of Rs.550-900 subsequently revised to Rs. 1640-2900. According to the respondents, because of the mistake committed by the respondents, said scale was given to the petitioner from June, 1981 till the retirement of the petitioner and therefore, the excess amount paid to the petitioner was required to be recovered from the petitioner and, therefore, order of recovery of Rs.1,26,190.20 was passed against the petitioner. It is required to be noted that it is not the case of the respondents that for getting the said pay scale of Rs.550-900 as revised to Rs.1640-2900, there was any misrepresentation and/or fraud played by the petitioner

before the respondents but it is the simple case of the respondents that it was a purely an administrative mistake or error committed by the department and, therefore, they are entitled to recover the said amount for correcting their own error or mistake. It is a settled principle of law that if any adverse order is required to be passed by the department and if the same is having any civil and adverse consequences, then, principles of natural justice are required to be followed and before passing such an adverse order, employee concerned against whom such order is going to be passed is required to be given reasonable opportunity to show cause as to why such an order should not be passed against him. It is not the case of the respondents that such an opportunity in compliance of the principles of natural justice was ever given to the petitioner before passing aforesaid two orders and taking action of withholding 10 per cent of the amount of provident fund but it is the contention of the respondents that in view of the observations made by this Court in the aforesaid judgment that; "However, in case after 30th June 1981 they have been paid the pay in the pay scale of Rs.550-900 then certainly the recovery could have been ordered ", they are entitled to recover the amount and it is their specific contention that in view of the aforesaid observations made by this court, it is not necessary for them to give any opportunity to the petitioner for recovering the excess amount from the petitioner. Thus, impliedly, they are admitting that they have not given any opportunity to the petitioner before passing the said orders and before taking the action. In light of these facts, if the order of this court in the aforesaid petition is considered, then, this court has nowhere clarified that such orders having adverse effect can be passed by the respondents by violating the principles of natural justice. These are not the observations made by this court in the aforesaid judgment and this was not the spirit of the court to observe in that way and from the observations, it also cannot be inferred. At the most, it can be said that the right to recover the amount has been granted or recognized by this court and in view of that, it has to be inferred that the right to make such recovery has to be exercised only in accordance with law and in due compliance of the principles of natural justice and not otherwise. It does not mean that such right has to be exercised or can be exercised even contrary to the principles of natural justice. The law on this point is settled by the apex court in the matter of Divisional Superintendent, Eastern Railways, Dinapur and others v. LN Kashri and others reported in AIR 1974 SC 1889 wherein

the apex court has observed that after the pay scale of an employee has been confirmed, reduction of scale without hearing him is illegal. It has also been held by the apex court in the said decision that on confirmation, the employee becomes entitled to rights to the post and to the scale of pay fixed. Similarly, in the matter of Bhagwan Shukla versus Union of India reported in AIR 1994 SC 2480, the apex court has observed as under in para 3 of the judgment:

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs.190.00 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs.181.00 p.m. from Rs.190.00 p.m. in 1991 retrospectively w.e.f.18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his basic pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the tribunal deserves to be set aside. We accordingly accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (Memorandum) impugned before the tribunal dated 25.7.1991 reducing the basic pay of the appellant from Rs.190.00 to Rs.181.00 w.e.f.18.12.1970."

Thus, in the case before the Hon'ble apex court, since the order reducing pay of the appellant was passed by the authority without hearing the appellant, it was set aside by the Hon'ble apex court as violative of the principles of natural justice. In the case before hand also, the respondents are contending that since their

right to make recovery has been recognized by this court as per the observations made by this court in the judgment as aforesaid, they were not required to afford any opportunity and, therefore, they have not heard the petitioner before passing the said two orders and withholding 10 per cent of the amount of PF of the petitioner. I am of the opinion that this is nothing but the misreading of the judgment of this court by the respondents. The judgment nowhere provides that the respondents can effect the recovery, if any, without hearing the petitioner but it merely recognizes the right of the respondents to recover the amount as per law which impliedly obliging the respondents to act in accordance with law and to follow the principles of natural justice and since that has not been done, in view of the principles laid down by the Hon'ble apex court in the aforesaid judgment, the orders as well as the action of withholding the 10 per cent of the amount of PF are required to be quashed and set aside.

Now, the next question is whether such an orders could be passed by the respondent after the petitioner retired on 31.1.1998 or not. This question has recently been examined by the Rajasthan High court in the matter of Narain Lal v. State of Rajasthan and Ors. reported in 2003 II CLR 1018. It was a matter relating to recovery of the amount wrongly paid. The petitioner therein retired employee challenged recovery of the amount wrongly paid to him without any fault on his part. In view of such facts, it was held by the Rajasthan High Court that the payments wrongly made without any fault on the part of the employee, having retired, recovery from him will cause legal injury. It has also been held that a legal right has accrued to him and, therefore, after his retirement, no recovery can be ordered against the retired employee. IN the said matter, the Rajasthan High Court has considered entire case law on this subject in para 9 to 15 and has observed as under in para 16, 17, 18 and 19:

"16. Thus, from the rulings of the Honourable Supreme Court as well as this Court just quoted above, it is clear that in case the court finds that any benefit was achieved by a person without there being any fault on his part in receiving such benefit, it would be just and proper to allow him to retain such benefit.

17. In the present case, the benefit of Rule 26-A of the RSR was given to the petitioner and such benefit was received by the petitioner

without there being any fault on his part, but mistake was committed by the respondents and, therefore, in such circumstances, it would be just and proper to allow the petitioner to retain such benefits.

18. Apart from this, when the person to whom payment was wrongly made without there being any fault on his part and that person has retired, in such a case, after his retirement, to ask such person to pay amount already received would necessarily causes a legal injury to him as in the meanwhile he would have utilized that amount and, therefore, from this point of view also, it can easily be said that a legal right has accrued in favour of the petitioner and under Article 226 of the Constitution of India, this Court has power to grant consequential relief such as not to recover the amount from the person to whom it was wrongly paid without there being any fault on his part.

19. Thus, the above question formulated by this court is answered in the manner that the amount paid to the petitioner wrongly on his fixation after giving him benefit of Rule 26 of the RSR without any fault on the part of the petitioner cannot be permitted to be recovered from him.

For the reasons stated above, this writ petition filed by the petitioner is partly allowed and the impugned audit objection report (Annexure 3) issued by the Local Fund Audit Department is quashed and set aside and the respondents are restrained from recovering the excess amount which was already paid to the petitioner."

Considering the facts of the present case and the decision of the Rajasthan High Court as aforesaid, I am of the opinion that the decision of the Rajasthan High Court is the answer to the second question and, therefore, according to my opinion, after the retirement of the petitioner, the respondents are not entitled to recover any amount from the petitioner, otherwise, it would amount to legal injury to the petitioner in respect of the legal right accrued in his favour.

As regards the third question, when there is no any fault on the part of the petitioner retired employee

or misrepresentation to the department for getting particular scale or benefit, the department is not entitled to recover the amount from the petitioner. This question has been examined by this court (Coram : Jayant Patel, J.) in the matter of M.M. Patel versus State of Gujarat reported in 2003 (1) GLH 697. Relevant observations made by this court in 5, 7, 8 and 9 of the said matter are reproduced as under:

"5. Mr. Supehia, learned advocate for the petitioners has contended, inter alia, that the issues in these petitions are covered by the judgment of the Division Bench of this Court dated 4.4.01 in LPA No. 578/00 in SCA No. 2196/1999. He further submitted that even the Apex Court in the matter of P. H. Reddy v. NTRD reported in 2002 (2) SLR 694 has taken the similar view. He submitted that as per the aforesaid decision once the higher payscale was fixed and the amount is paid to the employee, thereafter, if subsequently said decision is cancelled or revoked recovery cannot be effected.

6. xxx xxx

7. In view of the above, what is required to be oted is that there is no dispute on the point that pursuant to the decisiono f the higher authority the pay scale in the higher grade was granted to the petitioner and after a period of about more than 4 years the decision is taken of cancelling the earlier decision and as a consequence thereof recovery is sought to be effected. It is not the case of the respondents that the higher pay scale came to be granted on account of fraud or misrepresentation or any misdeed which can be attributed to the concerned employee. Therefore, it appears that it is on account of subsequent change of decision by the authority without attributing anything to the concerned employee the decision is cancelled and the recovery is sought to be effected. Therefore, under the circumstances, it will have to be examined as to whether such an act on the part of respondent is permitted under law or not.

8. In case of I.C. Patel (supra) the Division bench of this Court observed as under:

'The mistake was committed by the Board for which the appellant should not be

penalised. Recovery of excess payment made to the appellant for no fault on his part appears to be wholly unjustified.'

In case of PH Reddy (supra), the Apex Court also found that the order of fixation passed by the appropriate authority does not require any interference. Still, however, the apex court observed as under:

'The employees appelolant, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and, therefore, that part of the order of the authority is set aside.'

9. In the above view of the matter, I find no further discussion is required since the question is squarely covered by the decision of the Division Bench of this Court as well as of the Apex Court."

This question has also been considered by the Punjab and Haryana High Court in the matter of Ganesha Basti, Bhatinda v. State of Punjab and others reported in 2003 Lab IC 1029. The P. & H. High Court has considered the decision of the Hon'ble apex court in the matter of Sahib Ram v. State of Haryana, 1995 AIR SCW 1780 : 1995 (1) SCT 668 and has observed as under in para 6 of the judgment:

"The recovery is sought to be effected without complying with the principles of natural justice and giving an opportunity of hearing. The recovery could be set aside on this short ground alone. However, we have gone through the order to find out the justification in passing the impugned order. The pay of the petitioner was stepped up by the respondents without any misrepresentation on the part of the petitioner. Learned counsel for the petitioner has relied upon Sahib Ram v. State of Haryana, 1995 [1] SCT 668 [1995 AIR SCW 1780] to contend that the recovery cannot be effected if there is no misrepresentation on the part of the petitioner."

Therefore, in the facts and circumstances of the present case and also in view of the law laid down by this court in the matter of M.M. Patel versus State of

Gujarat reported in 2003 (1) GLH 697, as well as the decision of the Punjab and Haryana High Court in the matter of Ganesha Basti, Bhatinda v. State of Punjab and others reported in 2003 Lab IC 1029, the respondents are not entitled to recover any amount from the petitioner as it was not the case of the respondents that this scale was received by the petitioner on the basis of any fraud or misrepresentation before the department.

The fourth question framed by this court is covered by the provisions made in rule 57A of the Bombay Civil Service Rules, 1959. Relevant rule 57A of the said Rules is reproduced as under:

"57-A (i) Notwithstanding the provisions contained in these rules, the ay of a Government servant whose promotion or appointment to a post is found to be or to have been erroneous on the basis of facts, e.g. incorrect seniority, failure to apply any relevant rules or orders correctly, shall be regulated in accordance with any general or special orders issued by the Government in this behalf.

(ii) When any rule or order regulating pay is made with retrospective effect, the pay of a Government servant affected by such order or rule, shall be fixed notionally as if the rule order were applicable in his case but the Government servant concerned shall not be called upon to refund the resultant amount of overpayment on account of pay and allowances;

Provided that in case where the erroneous promotion or appointment was given on the basis of false information furnished by the concerned Government employee, departmental action shall be taken against him and the resultant amount of over payment on account of pay and allowances shall also be recovered from him."

Considering the provisions contained in rule 57A of the said Rules which provides that when any rule or order regulating pay is made with retrospective effect, the pay of a Government servant affected by such order or rule, shall be fixed notionally as if the rule order were applicable in his case but the Government servant concerned shall not be called upon to refund the resultant amount of overpayment on account of pay and allowances. In the facts of the present case also, salary of the petitioner was fixed initially in the pay

scale of Rs.550-900 which was subsequently revised to Rs.1640-2900 by the respondents and it is the case of the respondents it was the wrong committed by the department and such scale was given through mistake of the department and the petitioner is, in fact, not entitled for such a pay scale and in view of such facts, provisions of rule 57 A of the said Rules would squarely apply to this case because it is not the case of the respondents that such scale was given to the petitioner on the basis of false information furnished by the petitioner, as per the proviso to rule 57A of the said Rules. Therefore, in view of the provisions of rule 57A of the BCSRs also, which would normally apply to the respondent department being the panchayat department, the respondents are not entitled to call upon the petitioner to refund the resultant amount of over payment on account of pay and allowances and, therefore, considering this rule 57A of the said rules, the respondents are not entitled to recover any amount and they are not entitled to call upon the petitioner to refund the said amount.

In view of this, according to my opinion, the order passed by the first respondent dated 4th Sept. 1999 (after the retirement of the petitioner from service on 31.1.1998) and the second order passed by respondent no.2 dated 16th October, 1999 as well as the action of withholding 10 per cent of the amount of provident fund of the petitioner are required to be quashed and set aside.

In the result, this petition is allowed. The order passed by the first respondent dated 4th Sept. 1999 and the second order passed by respondent no.2 dated 16th October, 1999 as well as the action of withholding 10 per cent of the amount of provident fund of the petitioner are hereby quashed and set aside with a direction to the respondents to pay Rs.26,572.00 (Rupees twenty six thousand five hundred seventy two only) as well as the 10 per cent of the amount of General Provident Fund of the petitioner with accrued interest as per rules on the said 10 per cent amount of the GPF which was withheld by the respondents within one month from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

After this judgment was dictated by this court in open court, in presence of the learned advocates for the parties, learned advocate Mr. D.N. Pandya appearing for the petitioner prays to grant interest on the amount which has been recovered by respondent no.2 and the

amount of 10 per cent of the GPF withheld by the respondent no.2. It is necessary to note and I fail to understand why Mr. Pandya insisted for payment of interest on the said amount because the petitioner has nowhere prayed for interest on the said amount. When there is no prayer for grant of interest, when there is no averment to that effect, naturally the other side will not be able to deal with such prayer and now at this stage, for want of specific averment and the prayer to that effect in the memo of petition, such request cannot be entertained. Hence the request made by Mr. Pandya is rejected because granting of such request would cause prejudice to the right of the other side as they are not able to answer the said contention.

Dt.30.9.2003. (H.K. Rathod,J.)

Vyas